

# COMMUNITY NOTIFICATION LAWS

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## **ABSTRACT**

Speck, Michael Booth; M.S.; Department of Criminal Justice; College of Arts, Humanities, and Social Sciences; North Dakota State University; December 2007.  
Community Notification Laws. Major Professor: Dr. Kevin Thompson.

Community notification was a political response to repeat sex offending fueled by activists and the media's demand for rigid control of sex offenders; however, notification has failed to provide community protection from sex offenders. Data suggest the laws adversely affect the offender's ability to reintegrate into society and have unintended consequences for many others, including the offender's family, other innocent individuals, and the community. Furthermore, a false sense of security and reductions in incest reporting continue to victimize children, which results in further sex offender laws passed by legislatures without empirical data supporting such laws. Community support for notification laws and other restrictions continues to be strong, regardless of the consequences to the offender or other innocent individuals, even though there are a high percentage of community members willing to leave their children unattended regardless of sex offender presence. Research data suggest that sex offenders are a heterogeneous group of individuals, that reoffense rates are relatively low for some offenders, and that a holistic approach to sex offender treatment does reduce reoffense rates even further. Therefore, recommendations listed include eliminating community notification and implementing confidential notification, properly sentencing and treating sex offenders, increasing probation and parole officer quotas, and creating laws focused on proper child supervision.



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## **DEDICATION**

To all victims of sexual assault, especially children, and those negatively affected,  
especially incest victims, by legislative and community reactions.

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## INTRODUCTION

“Registered sex offenders are punished through their sentence, through the shaming process of registration, and through the reactions and responses of community members who are aware of registrants’ status as sex offenders” (Tewksbury, 2005:79). Community awareness, known as community notification (Megan’s Law), arguably is designed to protect the community by requiring local law enforcement officials to alert community members when a convicted, high-risk sex offender moves into or is about to establish residency in a community. Legislation is meant to assist parents in protecting their children with knowledge of sex offender identity and whereabouts which, in turn, assists the criminal justice system in controlling these offenders. There are many forms of community notification (town hall meetings, mailings, or door to door contact), however, the most common form of notification is public access to internet registries—some (for example, Alaska, Florida, or North Dakota) which list all sex offenders regardless of risk level.

Current focus on sex offenders resulted from a few horrific cases of child abduction, rape, and murder. Young children who became household names due to their violent deaths—Adam Walsh, Polly Klaus, and Megan Kanka—all have foundations and/or legal statutes named in their honor. The vivid imagery of their final moments enrages even the most docile among us and provides legislatures with unquestionable protection to enact “feel-good” policy regardless of its effectiveness or consequences (Avrahamian, 1998). This political move is viewed positively by a citizenry fed up with child predators to the extent that rehabilitation or treatment is not a primary concern, and

longer sentences and community notification are desired regardless of what the data may suggest (Berliner, 1996b).

The tragic death of Megan Kanka provided New Jersey legislators with the perfect vehicle to enact more stringent control on sex offenders—an innocent 7 year old girl seduced into the home of a twice convicted pedophile with the hopes of playing with a puppy. The assembly leader convened an emergency legislative session for this particular crime and moved a series of bills past committee scrutiny to the open floor for unobstructed passage (Avrahamian, 1998; Corrigan, 2006). Offensively engaging the media and exploiting this single event enabled social problem construction by way of the politicians and media's agenda, and subsequently diverted much deserved criticism away from a criminal justice system that permitted a repeat pedophile to plea bargain his second offense from what would have amounted to 30 years in prison, if convicted, to merely 10 years (Pallone, 2003). Megan's Law, unlike Washington State's 1990 Act creating notification policies, was critical in view of the fact that many of our federal laws initiate in the state of New Jersey (Corrigan, 2006).

Theoretically, community notification makes perfect sense—protects our children by supervising and assisting the offender to prevent future offenses. However, in reality, this policy decision has created numerous unintended consequences for sex offenders (not just pedophiles), sex offender family members, victims (some of whom are incest victims), and other innocent persons (Levenson and Cotter, 2005a; Tewksbury, 2005; Elbogen et al., 2003; Zevtiz and Farkas, 2000). Reintegration efforts, mostly placed on the shoulders of probation and parole officers, are complicated by community notification and the public's response to sex offenders. Reductions in incest reporting (Edwards and

Hensley, 2001), sporadic vigilante attacks, and suggestions that community notification has indeed failed to prevent repeat sex offending are all legitimate concerns requiring an examination of our nation's current notification strategies.

Closely examining and debating community notification is mostly limited to scholarly disagreements written in various journals—debate which was regrettably absent in both the United States and New Jersey congresses prior to passage of the legislation. Public debate is viewed as “protecting” sex offenders—a group undeserving of sympathy in many eyes—and those opposed to community notification are silenced before being given the opportunity to utter one point or fact dispelling the myths of sex offenders or fallacies of the law. In fact, legislators framed community notification as protecting children which protected it not only from attack, but legitimate policy related questions (Garfinkle, 2003; Avrahamian, 1998). Unlike gun control, abortion, or the death penalty, where the citizenry are somewhat equally divided (Gallup Organization, 2007) and free to debate the issue, sex offenders engender disgust and hostility from citizens of all political persuasions, thus community notification is supported by the vast majority of the public (Phillips, 1998); therefore, logical debate as to the law's effectiveness is absent.

Scholars in support of community notification policies describe positive benefits of community notification (Berliner, 1996a, 1996b; Lieb, 1996) suggesting community notification policies are consistent with community policing and opponents to the policy risk angering a public fed up with sexual predators. Berliner (1996a) and Lieb (1996) tend to dismiss offender concerns and ignore the deleterious effects—or at least minimize them—on offenders, the offender's family, and other victims thus eliminating the critical person, the offender, from the equation for preventing future victimization. For the most



part, positive benefits of community notification were primarily based on speculation which has yet to be supported by empirical research. However, increased community knowledge and awareness of how sex offenders operate as a result of community notification is seen as a major contributor in protecting children (Phillips, 1998). Additionally, offenders surveyed at a treatment hospital in Nebraska felt community notification laws were an incentive not to re-offend and positively impacted their desires for treatment (Elbogen et al., 2003).

The positive benefits discussed above are marginalized by the failures of parents to properly supervise their children and the community's negative response to sex offenders residing in their communities. Community surveys do reveal overwhelming support for community notification statutes, but these same surveys indicate a nonchalant attitude towards the existence of offenders by many parents (Phillips, 1998). In a Washington State telephone survey, 80 percent of the respondents felt community notification laws were important. However, only one-third of the respondents were aware of an offender living in their community and nearly 50 percent would still leave their children unattended (Phillips, 1998). If 50 percent of the parents would leave their children unattended with a "known" sex offender living within their neighborhood, what percentage would leave their children unattended absent a "known" sex offender?

Surveyed law enforcement personnel (probation and parole included), who doubt the effectiveness of community notification but agree with registration (Zevitz and Farkas, 2000), possess first-hand knowledge of the lack of parental child supervision, which may contribute to the statistic suggesting over 50 percent of police agencies doubt notification will benefit in future investigations, surveillance, and behavior modification (Zevitz and



Farkas, 2000). On the other hand, increased information sharing as a result of registration—a law enforcement function—is cited by most agencies as a benefit (Zevitz and Farkas, 2000). Increased information sharing and knowledge of offender status and whereabouts is intended to assist law enforcement by quickly identifying and arresting offenders suspected of committing a repeat sex offense (Phillips, 1998).

Along with the community's failure to properly implement their offender and child supervision responsibilities as it pertains to community notification, the federal government's mandate of certain provisions for community notification, without a funding stream, has overloaded agent caseloads making it difficult for proper supervision (Zevitz and Farkas, 2000). Probation and parole officers' offender caseloads are capped at 25 offenders, but many report having caseloads larger than this. Further, community notification has increased probation and parole officer's workload due to the federal requirements and publicity surrounding sex offenders (Zevitz and Farkas, 2000). Difficulty finding housing, media relations, and preparing for community notification meetings create added workloads for these agents without an increase in personnel. Police agencies (actively involved in notification meetings and assisting with offender supervision) viewed community notification as another unfunded mandate causing increased workloads resulting in strained departmental resources.

In addition to the burdens on law enforcement, surveys of sex offenders (Levenson and Cotter, 2005a; Tewksbury, 2005; Elbogen et al., 2003; Zevitz and Farkas, 2000) have revealed negative, unintended consequences (vigilantism, harassment of both offender and family members, loss of employment and housing, and attacks on other innocent community members) as a result of community notification. Zevitz and Farkas (2000)

report 3 percent of the sex offenders surveyed suffered vigilante attacks, which most consider rare (Levenson and Cotter, 2005a); however, some innocent men believed to have been sex offenders have been attacked as well (Freeman-Longo, 2000). Also, victims of family sex abuse have been identified via sex offender websites resulting in the spouse and child of a convicted sex offender being harassed by community members, and some children quitting school as a result of death threats (Freeman-Longo, 2000). Lastly, Levenson and Cotter (2005a) report roughly one-third of sex offenders lose their jobs, homes, and experience threats; however, Zevitz and Farkas' (2000) data suggest the numbers are much higher with 57 percent reporting job loss, 83 percent reporting losing their residence, and 77 percent reporting threats and harassment.

Perhaps the most negative consequence of notification is that it may discourage reporting of familial sexual abuse. Edwards and Hensley (2001) have suggested that data from New Jersey and Colorado indicates reductions in reports of incest offending as a result of notification laws. Sexual abuse within a family is extremely private so, in order to avoid public humiliation, victims and non-offending relatives decide not to report the offense in order to "save the whole family" (Edwards and Hensley, 2001:92).

Additionally, continued victimization as a result of unsupervised children (Phillips, 1998) continues to make headlines throughout the nation resulting in yet further legislation (for example, Jessica's Law). This further legislation is corroboration that "Megan's Laws have been an ineffective weapon to curb sexual offenses against children" (Avrahamian, 1998:302) and yet additional corroboration is Barnoski's (2005a) Washington State data indicating reductions in sex offenses, but, with reductions across the board for all criminal

activity, there is no clear evidence crediting community notification with sex offense reductions.

Ideally, if community notification laws were an effective policy aimed at preventing repeat sexual offending, there would be no need for Jessica's Law, decreases in incest reporting would be nonexistent, and communities would open their "doors" to offenders in an effort to properly assist them with reintegration and supervise their activities. However, in reality, the data suggest this is not the case due to the community's hostility engendered by sex offenders and legislature's actions (for example, residency restrictions) creating even more difficulty for sex offender reintegration efforts.

The lack of political debate and committee scrutiny for community notification policies persists with each new law designed to amend apparent loopholes or failures of notification strategies. Each time an innocent child is sexually assaulted and murdered, activists and politicians seize the moment to enact tougher legislation in an attempt to further restrict sex offenders. Jessica's Law and 1,000 or 2,000 foot rules are passed without any discussion as to the consequences of such legislation, and are not based on empirical data (Levenson and Cotter, 2005b; Colorado Department of Public Safety, 2004). This monopoly of ideas is dangerous, thus constituents should be suspicious of bipartisan policy decisions passed without the need for some debate and compromise regardless of the group of people they are targeting. Additionally, the shield protecting community notification creates a slippery slope opening the door for other criminal types to be subjected to notification policies (Garfinkle, 2003; Zimring et al, 2007; Sample and Bray, 2003).



This paper reviews the community notification law and recent sex offending cases that are believed to have contributed to community support for notification laws. Community members' opinions (sex offenders and law enforcement included) about the need for and effectiveness of notification laws are also reviewed. Additionally, a discussion on what notification has appeared to accomplish will be evaluated and discussed. Also, a brief discussion on "blanket" policies and their punitiveness, juvenile sex offenders, and plea bargains is included in the Beyond Notification section. Last, policy recommendations will be suggested dealing with the future of notification laws, sentencing and treatment for sex offenders, increased funding for criminal justice practitioners, and enactment of effective child supervision statutes, as well as educating the public on the current status, successes and failures, of notification strategies.



## **LITERATURE REVIEW**

### **Current Policy**

Megan's Law, New Jersey's version of other state and federal notification laws, is the foundation for the federally mandated community notification statute and, although it differs from state to state, at its core is community notification (Prentky, 1996). Megan's Law is named after Megan Kanka, a 7 year old girl brutally sexually assaulted and murdered by a repeat sex offender. Advocates complained, as did Megan Kanka's mother, that if parents were made aware of repeat sex offender presence, then they would be better equipped to protect their children. The focus of community notification is based on the premise of offender awareness with the goal to provide the community with sex offender information in order to protect children and deter these offenders from committing another sex crime (CSOM, 2002).

Sex offender information includes the sex offender's crime, identifying information (race, age, and hair color), home and work addresses, and identifying vehicle information so guardians may better protect their children, and assist law enforcement by "supervising" the offender (Presser and Gunnison, 1999). Protection and supervision are viewed by advocates as the primary ingredients for effective sex offender control—prevent the child from contact with a "known" offender and make it known to the offender that his actions are constantly and consistently being observed. Notification is required for high-risk offenders; however, many lower level offenders are identifiable to the public as a result of state discretion authorized by federal law.

Three basic notification categories exist: 1) broad notification (19 states), 2) notification to those at risk (14 states), and 3) passive notification (17 states) (CSOM,

April 2001). Broad notification is usually reserved for the Level III (high-risk) sex offender whereby everyone in the community is notified via door to door contact, flyers, mass media, and/or the “town hall” type community notification meetings. Notification to those at risk is usually reserved for the Level II (medium-risk) sex offender whereby certain groups are notified such as local churches, child care centers, and other agencies deemed necessary by law enforcement. Passive notification is usually reserved for the Level I (low-risk) sex offender whereby citizens may access information via the internet or request registry information from local authorities (CSOM, April 2001).

The flexibility delegated to individual states by the federal government has created an environment where notification and registration appear distinctly separate functions in some states, and synonymous in others. For example, Minnesota only identifies Level III sex offenders on their publicly assessable sex offender internet registry. Additionally, offender risk level is determined by the state sanctioned risk assessment tool (244.052, Minnesota Statute, 2006). This is a clear example of notification and registration intent, and indicates the state’s willingness not to stroke all offenders with the same brush.

North Dakota’s Sex Offender Registry can be viewed by anyone with internet access, and contains colored pictures of Level III offenders while providing the names and addresses for all other offenders (picture not included). The offender’s picture is somewhat irrelevant as most citizens are unable to remember or effectively describe characteristics such as height, weight, and facial features. However, public access to all sex offender addresses is more effective as many citizens are capable of identifying a residence and remembering what house or street to avoid. However, posted addresses without the offender’s picture may increase the potential for other non-sex offending

residents of the house to become victims of vigilante attacks. North Dakota's internet access and posting policy blurs the intent of the distinct separate functions of notification and registration, but not nearly as much as the state of Florida.

In Florida, sex offenders are registered for life and risk assessments are not employed, therefore, all offenders, regardless of their crime or risk of reoffense, are treated equally (Levenson and Cotter, 2005a). In other words, all offenders are listed with their pictures on the Florida Department of Law Enforcement's website—offenders convicted of child rape to those who exposed themselves in public (including public urination) to those accessing child pornography. Other states, such as Louisiana, require offenders to take additional steps identifying themselves to their neighbors (Zevitz et al., 2000) and also require them to place a "sex offender" bumper sticker on their vehicle (Elbogen et al., 2003).

The differing approaches adopted by states to control sex offenders may have shaming and stigmatizing effects on those offenders; however, the public's intolerance and lack of concern for sexual predators, as with other criminals, reached its boiling point to the extent that something, almost anything, needed to be done.

### **Background and Foundation of Current Sex Offender Policies**

Sexual offending is not a new phenomenon nor is child abduction and murder. Early in the 20th Century sex crimes against children, committed by "genetically unfit" predators, resulted in sterilization and castration until the United States Supreme Court ruled the practices unconstitutional (Terry, 2006). Later, in the mid 1930s, sexual offending received more attention, but, this time, offenders were viewed as "sexual psychopaths" and were institutionalized, civilly, until they could be cured (Terry, 2006).



During this era, sex offenders were viewed as 'degenerates or perverts with a mental disorder' (Terry, 2006). Offender registration was also first used in the 1930s for repeat offenders, not just sex offenders; however, the intent of the law was not to protect and supervise, but rather drive the offender out of the community (CSOM, 1999).

After what appeared to be a period of calm, sexual offending concerns re-emerged in the 1980s as a result of adult children claiming childhood sexual abuse—repressed abuse revealed or created during therapy sessions and subsequent litigation (Terry, 2006). Additionally, during this same era, the missing children phenomenon, and kidnapping and murder of Adam Walsh—more specifically John Walsh's crusade—commanded the attention of the mass media and politicians in Washington.

In order to command attention from politicians and media outlets, claims-makers for the missing children phenomenon reported exaggerated statistics during the 1970s and 1980s, and provided examples of the worst case scenarios as an effective means to compete for precious public attention and legislative action (Best, 1987), just as claims-makers for elderly abuse did in the 1980s (Crystal, 1987). For sexual offenders who commit child murder, activists did not need exaggerated statistics to command attention, although claims of tens of thousands of Adam Walsh's were made (Best, 1987). The horrifying ways in which these children were abused and died, combined with cable news' 24 hour coverage, sensationalized the event drawing on the fears and concerns of the citizenry. The overriding theme was one child kidnapped, raped, and murdered was one child too many, and the passage of any law is justified if it can save at least one innocent child.



The kidnapping and murder of Adam Walsh and John Walsh's testimony before Congress (Best, 1987) advanced the "one child too many" view, and were catalysts in creating a get tough on crime environment for "all" sex offenders much like violent drug crimes did for the recreational drug user (Terry, 2003). Tough on crime policies of the 1980s and 1990s transferred over into Hollywood with the successful Saturday night line-up of COPS and America's Most Wanted. The first hour highlighting our community's finest chasing down the lowest forms of society—nearly always placing them in jail—was followed by John Walsh enlisting viewers' assistance in tracking down fugitives and providing the "scumbags" the justice they deserve. The public's attitudinal transformation was evident by the astounding success of these programs—a transformation that would eventually lead to tougher policies to combat all offending, including sex offending.

The brutal murder and sexual assault of Megan Kanka by Jesse Timmendequas catapulted this "social problem" into public view, not experienced since the murder of Adam Walsh; however, there were other events prior to Kanka's murder that paved the way for the un-obstructive passage of Megan's Law. As mentioned, the "get tough on crime" policies of the 1980s (Terry, 2003), murder of Polly Klaas, abduction of Jacob Wetterling, and Washington State's early notification policies, to name a few, can be considered the foundation for current sex offender policies.

In the late 1980s and early 1990s, a few cases—cases used by activists to effect change—summoned mass media attention and the nation's focus. Earl Shriver, a convict with a 24 year history of sexual violence and murder, was released from a Washington State prison even though the correctional and psychological staff feared he would carry

out his sadistic sexual fantasies (Terry, 2006). In 1989, he raped, strangled, and sexually mutilated 7 year old Ryan Hade—a sexual fantasy he described vividly to fellow inmates prior to his release. The government, however, lacked the means to keep him confined, criminally or civilly (Terry, 2006). This case resulted in Washington State passing the nation's first notification statute and indefinite confinement laws for sexual predators (Barnoski, 2005a; Phillips, 1998), but it did not command the type of attention to effect change nationally.

Jacob Wetterling, an 11 year old Minnesota boy, was abducted at gunpoint in 1989 by a masked individual (Levenson and Cotter, 2005a). Neither Jacob Wetterling nor his abductor have ever been located, but his abduction created the sex offender registration requirements with the passage of the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, 1994 (Levenson and Cotter, 2005a). The Wetterling Act required registration for at least 10 years, mandated address updates from offenders and verification by authorities, and authorized sex offender information to be released to the public (CSOM, 1999).

Another victim, 12 year old Polly Klaas, was kidnapped from her mother's California home, raped, and murdered by Richard Davis in 1993 (Terry, 2006). This case shocked nearly every American due to the brazen way in which Richard Davis entered the home with a knife and abducted Polly Klaas as two of her friends witnessed in horror. Furthermore, Richard Davis' comments during the sentencing phase of his trial—comments insinuating that he did not sexually abuse Polly Klaas, not like her father was guilty of, and vocalized with an evil, vindictive grin on his face—enraged her father, the judge, and the nation providing a picture, although inaccurate, of all sex offenders.

Lastly, Megan Kanka's sexual assault and murder was the "last straw" so to speak and enraged the community when it was revealed that, not only was Jesse Timmendequas a twice convicted sex offender but, he was sharing a house with two other convicted sex offenders without anyone in the community aware of their status. Megan's Law was signed into law swiftly and unabated by New Jersey Governor Christine Todd Whitman within three months of Megan Kanka's death (Avrahamian, 1998). President Bill Clinton signed into law the federal notification statute in 1996, thus making notification policies a requirement nation-wide (Avrahamain, 1998).

### **Previous Research Overview**

Community notification debates in scholarly journals commenced with scholars expressing their views based on speculation and fairness of the law (Edwards & Hensley, 2001; Berliner, 1996a, 1996b; Freeman-Longo, 1996, 2000; Lieb, 1996; Prentky, 1996; Presser and Gunnison, 1999; Avrahamian, 1998; Quinn et al., 2004). Opponents of the law cited possible negative, unintended consequences such as vigilantism, mistaken identities, and obstacles to offender reintegration. Proponents suggested the unintended consequences were acceptable given the primary benefit from notification laws was protecting children from sexual predators.

In an attempt to better understand the notification laws impact on sex offenders, surveys were conducted with sex offenders, and most offenders opined community notification to be unfair and adversely impact their ability to reintegrate into society (Levenson & Cotter, 2005a; Tewksbury, 2005; Elbogen et al., 2003; Zevitz and Farkas, 2000). Other surveys evaluated the community's reaction when notified of a sex offender moving into their particular community (Zevitz et al., 2000; Phillips, 1998). Zevitz et al.



(2000) discovered increased anxiety levels among community members which could now be directed towards the sex offender and Phillips (1998) learned community members with children lacked sufficient concern regarding leaving children unattended. Zevitz and Farkas (2000) also surveyed law enforcement professionals (police, parole, and probation officers) ascertaining their specific departments ability to manage the federally mandated program and successfully assist the offender reintegrate into a community. Their findings indicate lack of departmental resources, funding, and personnel create difficulties supervising and managing sex offenders as a result of community notification.

Exploratory research thus far does indicate negative, unintended consequences (loss of home, job, relationships, vigilante attacks, isolation, shame, and fear) as a result of community notification laws, as speculated by opponents, and lacks positive aspects as speculated by proponents. However, the vast majority of citizens view community notification as a vital tool to prevent repeat sexual offending (Phillips, 1998; Zevitz and Farkas, 2000).

### ***Community's Perceptions, Reactions, and Concerns***

Literature discussing sex offending and community notification laws is replete with comments suggesting registration and notification resulted from the public's concern and outcry with sexual predators. Nevertheless, all the literature reviewed thus far lacks community polls soliciting citizen perceptions of sex offenders and proposed laws in response to their crimes. Instead, the death of Megan Kanka and policy decisions that followed was clearly influenced by media and political agendas rather than the public's agenda (Avrahamian, 1998). With that said some post-Megan's Law community surveys have been conducted regarding citizen perceptions of community notification.

In Washington State, the birth place of notification laws, a telephone survey conducted in 1997 revealed that 80 percent of the respondents viewed community notification laws as a very important tool in protecting the community and reducing reoffense by the offender. Of those surveyed, only one-third of the respondents were aware of an offender living in their neighborhood (Phillips, 1998). Additionally, Phillips reports that 60 percent of those surveyed believed community notification will force sex offenders to behave appropriately due to their past behaviors being made public and that 75 percent of respondents believed that public awareness hampers the offender's reintegration process by making it increasingly difficult to find housing, employment, and establishing new friendships. Also, just less than half of the respondents supported the offender's desire to start a new life. Shockingly, roughly 50 percent of the respondents reported that sex offender awareness would not stop them from leaving their children unsupervised, and those with an actual convicted sex offender living in their communities reported that fact alone would not stop them from leaving their children unattended (Phillips, 1998), an attitude and practice contradictory to the entire premise of community notification, but consistent with the findings of other studies (Zevitz et al., 2000).

Zevitz et al.'s (2000) data of 704 completed surveys collected at 22 statewide community notification meetings located at 16 different locations throughout the state of Wisconsin disposed them to conclude that community notification meetings have an important role in managing sex offenders, if done properly. When questioned as to the reason for notification meetings, 59 percent of respondents stated it was to inform them about an offender moving into the community. Other community members, 29 percent, believed the reason was to soften community reactions to placing a sex offender in the

community, and 18 percent expected to prevent or remove the offender from the community. Less than half, 49 percent, were pleased with the sex offender information provided to them at the meeting, however, some of the information caused residents more concern, frustration, and anxiety.

Further analysis from Zevitz et al.'s (2000) Wisconsin study revealed over one-third (38 percent) of the respondents were more concerned (higher anxiety levels) with an offender living in the community, and nearly two-thirds (62 percent) were either less concerned or unchanged. In other words, 62 percent may probably never view the sex offender website and participate in supervising the offender. Moreover, those with increased anxiety levels, especially those who expected to stop the offender from setting up residence, may resort to the vigilante activities as reported by some sex offenders in an attempt to drive them out of the neighborhood (Zevitz and Farkas, 2000). With roughly only half of the community members willing to give offenders a second chance (Phillips, 1998) and some angered that an offender was being placed in their community (Zevitz et al., 2000), it is highly likely that some forms of harassment will occur. Zevitz et al.'s (2000) overall sentiment is community notification meetings were viewed as extremely positive and important to the community, and community members can be effective in assisting with reintegration by becoming part of the supervision network designed to compel the offender not to recidivate.

### ***Law Enforcement Perspective and Concerns***

Law enforcement view notification statutes as another unfunded mandate levied on them and lacked guidelines for implementation (Zevitz and Farkas, 2000). Information sharing through the registration process was viewed as positive; however, while many



viewed notification as a benefit to the community, they doubted its effectiveness (Zevitz and Farkas, 2000). Notification statutes affect probation and parole officers by 1) forcing them to spend precious hours on preparing for notification meetings, 2) requiring most of their time supervising high-risk sex offenders at the expense of others in their caseload, and 3) forcing them to deal with the media and how it responds to an offender moving in “next door” (Zevitz and Farkas, 2000). The overreacting, sensationalized media make it difficult for these agents to obtain effective housing for these offenders and create even more citizen anxiety. Zevitz and Farkas (2000:9) suggest policy-makers should “encourage cooperation between police and probation/parole, provide funds to hire and train more probation/parole agents, and ensure adequate community support” in way of housing, employment, and treatment for sex offenders. This suggestion aligns with the argument put forth by Prentky (1996) suggesting registration, not notification, is sufficient to supervise offenders, and only those in the criminal justice and clinical systems should be aware of the offender’s status.

### **Perceived Benefits Versus Realistic Outcomes**

Empirical evidence suggesting that community notification laws will provide enhanced protection to the community from victimization is sketchy. Early in the debate, arguments for community notification validated its existence citing the desires of the community and allowing the law to “run its course” so empirical research could be conducted (Berliner, 1996a). Berliner’s argument for community notification avers that opponents to the law are basing their arguments on speculation, however, her assertion that community notification will protect children, help the community understand sexual offending, and assist the community members to “take responsibility for reaching out to

offenders and provide jobs and a support system they need” (1996a:101) was also based on speculation and a supposition that has not yet surfaced. In reality, children are still being victimized (as seen on the evening news), citizens homogenize sex offenders, and communities are not welcoming sex offenders, even low-risk offenders, and are actively, via legislation (for example, Jessica’s Law, California’s 2,000, and Florida’s 1,000 foot rules), attempting to drive them out of their communities—much like in the 1930s as discussed previously.

### ***False Sense of Security***

Suggestions that community notification will protect children are often countered with the false sense of security argument. False sense of security begins with believing that if you know who is dangerous in your community then you believe you are aware of all dangers—evidenced by police warnings every Halloween reminding parents to protect their children from the “unknown” predator. These unknown predators are not only those who have yet to be discovered by authorities. Many sex offenders, 46 percent in one study, include convicted sex offenders living at an address not posted in the official registry (Freeman-Longo, 2000). Sex offenders continue to live secretly in one community while listing an address in another, which is a barrier to notification strategies. Jessica Lunsford’s death is an example of this as well as the argument put forth immediately below.

Edwards and Hensley (2001) suggest community notification laws could increase stranger based offenses which tend to be more predatory and harmful to the victim. Unattended children can easily become the victim of an offender residing in another community hoping to fulfill his sexual fantasy away from those who are aware of his

status (Freeman-Longo, 1996; Edwards and Hensley, 2001). The abduction, rape, and murder of Dru Sjodin by Alfonzo Rodriquez is an example of an offender leaving his community, actually crossing state lines, to commit his crimes. Megan Kanka's death could have been committed by a sex offender driving by in his automobile just as easily as Samantha Runnion was forced into a vehicle while playing with other children at the end of her driveway. Jessica Lunsford was raped and buried alive by a sex offender visiting family members a few doors away. Community notification, as well as residency restrictions on sex offenders, may very well increase stranger-based offenses, however, many sex offenders have admitted to never offending near their residences in the first place (Levenson and Cotter, 2005b). Therefore, the primary means to prevent these types of offenses against children, as well as "non-stranger" danger, is with proper parental supervision which will be discussed later. For now, the topic examines claims that community notification is a form of community policing.

### ***Community Policing or Draconian Public Humiliation***

Supporting Berliner's (1996a) community acceptance assertion, Lieb (1996) classifies community notification as a form of community policing, but Presser and Gunnison (1999) reject the community policing claim citing clear evidence of community rejection of sex offenders which is contradictory to restorative justice. Presser and Gunnison identify seven areas where they view notification as differing from restorative justice, a few of which are discussed below.

Presser and Gunnison's views of crime element states that the offender's "other life roles" are ignored due to his "master status" as a sex offender (1999:303). The offender is not separated from his criminal act—he is a sex offender, not a person guilty



of sexual offending. Identifying the offender with his offense results in hostility towards the offender, therefore, “community policing” morphs into vigilantism, shaming, and ostracism. The “other life roles” argument (husband, father, son, or employee) is supported by literature and offender surveys who report dealing with negative consequences (loss of job and friends) including threats, harassment, property damage, and vigilantism (Tewksbury, 2005; Zevitz and Farkas, 2000; Levenson and Cotter 2005a). Offenders successfully working and living in the community for three years (Freeman-Longo, 2000), and one college graduate for thirteen years (Levenson and Cotter, 2005a) lost their jobs due to the retroactive application of the law. Employment termination based on past behavior publicized by policy decisions prevents offenders from properly fulfilling their roles as the family providers resulting in a lifetime of stigmatization.

Along with ignoring his other life roles, the sex offender’s “master status” inappropriately carries claims of high recidivism rates (Presser and Gunnison, 1999). Recidivism rates for sex offenders is difficult to determine, however, a 1994 study from the Department of Justice revealed a 5.3 percent reoffense rate (another sex crime) (US DOJ, 1994). Additionally, longitudinal studies indicate sex offenders recidivate lower than that of the general criminal population (CSOM, 2002; Sample and Bray, 2003). This low recidivism rate is second only to murder, however, notification advocates suggest the number to be much higher due to the secrecy of sexual offending. Nevertheless, community notification laws were not enacted for the 75 percent of adults and 90 percent of children sexually assaulted by a person known to them (Presser and Gunnison, 1999). They were enacted to stop the few violent acts of rape-murder of our children by the “strangers” living in our communities. The media and political misrepresentations, along

with the attention focused on the few violent offenders, causes the general public into believing that sex offenders are persistent; however, some of the reoffense data does not suggest this is the case (US DOJ, 1994; McGrath et al., 2003; Zimring et al, 2007; Garfinkle, 2003).

For sure, reductions in reoffense rates is the goal of every citizen and legislatures desire to reduce victimization, however, notification fails to offer effective solutions to actually control sex offenders thus reducing recidivism (Prentky, 1996). For example, a 1995 study of Washington State's 1990 Act creating notification laws indicated there were no reductions in sex offending recidivism citing non-notification and notification groups re-offended at the same rate (CSOM, April 2001). Furthermore, a more current analysis in 2004 in Washington revealed recidivism reductions among sex offenders, but, due to recidivism reductions for all criminal activity, the author could not indicate whether or not the community notification law actually was the cause for this reduction (Barnoski, 2005a). Berliner (1996a) supported the failure to reduce recidivism by positing no increases or reductions in recidivism pre- and post-notification statutes to support her argument that the law does not drive offenders to re-offend, which suggests an overall null effect of the law for its stated purpose.

Another aspect of Presser and Gunnison's (1999) work is citizen participation. They state community justice clearly strengthens the community, whereas community notification does not due to its utilitarian approach. Furthermore, they discuss notification advocates denial of their or governmental responsibility for offenders failure to secure housing or jobs, and community reaction towards the offender which, again, contradicts the purpose of community justice.

Citizen participation as a result of community notification seems to have increased the difficulties for sex offenders in obtaining their basic needs of food, clothing, and shelter which limits the offender's ability to function in the community (Freeman-Longo, 1996). Intimidation, threats, loss of housing and employment, vigilantism, stress, isolation, fear, shame, stigmatizing, and hopelessness was not the intent of the legislation, but such conditions are prevalent and should not be dismissed as insignificant events. Edwards and Hensley (2001) state that the two primary triggers for a relapse is stress and isolation, both of which are chief complaints among offenders (Levenson and Cotter, 2005a; Zevitz et al., 2000).

Lastly, community justice also attempts to understand the offender and focus on their positive aspects; this is not the case with community notification (Presser and Gunnison, 1999). Community notification makes no attempt to understand why sexual offenders offend, nor does it attempt to force the offender to face up to his actions (Presser and Gunnison, 1999). The community's refusal to distinguish the offender from his offense creates stress, isolation, fear, embarrassment, hopelessness, and shame which compelled some sex offenders to conclude the law was 'enacted to force them to take their own lives' (Levenson & Cotter, 2005a). Other offenders believed community notification laws will force offenders to re-offend or be driven back to prison (Zevitz et al., 2000), which is precisely what some offenders have voluntarily done (CSOM, April 2001). Another offender waiting release from prison was delayed due to his parole officer's failure to properly place the offender in the community until a judge threatened to fine the local government \$1,000 a day each day the offender's release was delayed (Freeman-Longo, 2000).



Lack of community support, master sex offender status, false recidivism claims, and public humiliation thwart offender reintegration efforts and sends the signal that the offender cannot be trusted to behave appropriately. Rehabilitation of sex offenders is severely hampered, if not impossible, as a result of the consequences derived from community notification laws. Megan's Law has created an atmosphere where many Americans view all sex offenders in the same light and with the horrific evil face of Richard Allan Davis. This widening of the net blurs the public's perception, therefore, they fail to recognize some sex acts and crimes are worse than others, and, while the temptation is ever present to view child molesters and pedophiles in the same light, it does nothing for the reintegration, treatment, and rehabilitation of those desiring change. Quinn et al.'s inclusive labeling states "all sex offenders are predators and the uninformed public only has views of stranger kidnappings and murders of our children" (2004:217). Community rejection and net widening is not just limited to the offender. Community notification has created new victims, as well as drive into hiding existing victims.

### ***Collateral Victims***

The primary flaw in notification laws is "the potential to victimize others who are not sexual abusers" (Freeman-Longo, 1996:92-93). Community notification impacts family members of the offender. Children quitting school due to death threats (Freeman-Longo, 2000), harassed into quitting the high school football team (Zevitz and Farkas, 2000), and a mother and daughter (an incest victim) harassed by neighbors once their address was posted on a sex offender website (Freeman-Longo, 2000) are three examples of this policy creating further victimization. Community reaction described above definitely increases the already present stress within the family, which may result in

tearing the family apart and building societal resentment within the offender. In an effort to avoid such negative circumstances, some suggest incest offending—a relatively prevalent offense—is not being reported due to notification laws.

### **Reduced Incest Reporting**

Edwards and Hensley (2001) suggest community notification laws have caused reductions in incest reports in New Jersey and Colorado. “Sexual abuse within the family is an intensely private and sensitive matter, the exposure of which could shroud the family into feelings of shame, guilt, and embarrassment” (Edwards and Hensley, 2001:91). Children abused at the hands of their father, grandparent, or uncle may not report the crime for fear of facing ridicule at school or by neighborhood children (Freeman-Longo, 1996). Mothers may not report the crime in an effort to keep the family together. Research suggests that there are two primary reasons why women do not report sexual assault: 1) the offender may be depended on by the entire family and 2) fear of others finding out about the assault (CSOM, May 2001). In essence, community notification laws, which were created to confront less than one percent of the type of sexual offending Megan Kanka suffered, that is rape-murder (Freeman-Longo, 1996), discourages effective treatment and recovery for the vast majority of the victims and offenders where rape may not even occur and murder is non-existent. Community members harassing offender family members (some of which are the victims) and evidence of decreased incest reporting, not only fails to help victims, but creates further victimization (Presser and Gunnison, 1999).

### *Other Victims*

As with family member and incest victims, others have been victimized when mistakenly identified as a sex offender and have felt the retribution of an enraged community fawned by notification laws. One such incident resulted when a group of community members entered the home of an “innocent” man and physically assaulted him causing hospitalization (Freeman-Longo, 1996). Sex offenders deliberately providing false addresses to the authorities (Freeman-Longo, 2000; CSOM, April 2001) and those authorities posting such information on their official websites without validation has also caused victimization in many states, and is precisely why many in the law enforcement community view notification as a mandate that, depending on the size of the community, is difficult to maintain (Zevtiz and Farkas, 2000).

The federal government’s threat to penalize each state’s Byrne Grant Funds by 10 percent if they failed to comply with the Jacob Wetterling Act by 12 September 1999 was irresponsible, and sent the message that Jesse Timmendequas’ type crimes are more prevalent and harm more children than illicit drugs and other criminal activity (CSOM, April 2001). Withholding federal highway funds from states that refuse to pass helmet laws (a costless endeavor for the state government) is acceptable, but mandating costly measures without a funding stream is, again, irresponsible. If community notification was truly an effective solution to prevent re-offending, the federal government should have included new funds for proper implementation with the new mandate.

The continued listing of wrong addresses due to the local government’s failure to verify offender residences (which is itself a failure to comply with the Wetterling Act) and the subsequent vigilante attacks against the innocent is clearly a governmental failure and



they own the responsibility for such actions. To suggest otherwise—removing government culpability, the official “keepers” of the websites, by claiming such actions do not endorse vigilante attacks—ignores the point that the government should not assist vigilante attacks by providing misinformation to a citizenry enraged by sex offenders, rage fueled by politicians and political activists.

In sum, although citizens demand longer sentences and notification regardless of what the data suggest (Berliner, 1996b), their lack of understanding of who sex offenders are, how they operate, and true recidivism rates fail to protect our children and rehabilitate offenders (Quinn et al., 2004). The public continues to accept and vote for policy decisions with little concern for their effectiveness. Community notification laws have been implemented ineffectively, however, even when implemented properly, the benefits are marginal (Avrahamian, 1998), especially considering the financial and personal costs associated with the statute (Freeman-Longo, 1996). The bottom line is “lawmakers have an obligation to minimize the unintended consequences of social policies on citizens” (Levenson and Cotter, 2005a:63) and “to ignore the emotional, psychological, and social-situational impact of community notification laws on offenders is irrational, short-sighted, and potentially disastrous” (Edwards and Hensley, 2001:91). Advocates for safer communities, the Safer Society Foundation, agrees with registration, not notification (Freeman-Longo, 1996) and, upon a reevaluation of notification laws, Freeman-Longo (2000) concludes conditions are worse in the community as a result of notification laws.

## BEYOND NOTIFICATION

### **A Gateway to Blanket Punishment, Infringement on Juvenile Justice, and Barriers to Offender Accountability**

Theoretically, community notification laws appear to be a simplistic and creative response to address repeat sexual offending of children. Community members simply “access information that will assist them in protecting themselves and their families from dangerous sex offenders” (CSOM, 2002:8). However, as the literature suggests, the deleterious effects on the offender, family members, victims, and others; the communities negative (repressive at times) response to sex offenders; and false sense of security inherent in the law continue to expose notification laws to scholarly debate and criticism.

Freeman-Longo's (1996) speculative, negative aspects of notification laws have been supported by exploratory research and the difficulties sex offenders experience attempting to move forward with their lives in the community (Edwards & Hensley, 2001; Freeman-Longo, 2000; Prentky, 1996; Zevitz and Farkas, 2000; Zevitz et al., 2000; Presser and Gunnison, 1999; Avrahamian, 1998; Quinn et al., 2004). Additionally, suggestions that notification laws are an example of unchallenged monopolies of ideas where legislation is piled on top of flawed legislation (Edwards and Hensley, 2001) is demonstrated by sex offender residency restrictions (Levenson and Cotter, 2005b; Colorado Department of Public Safety, 2004; California Proposition 83), and the inclusion of juveniles in sex offender registration and notification requirements (Garfinkle, 2003; CSOM, 1999). Furthermore, the punitive aspect of notification laws and desires of sex offenders to avoid public humiliation have resulted in plea bargain agreements that subvert the stated reason for notification which may put the community at more risk (Freeman-Longo, 2000). Finally, exaggerated claims of high recidivism rates

among sex offenders by activists are countered by data suggesting sex offenders have lower rates than the general criminal population (Sample and Bray, 2003; US DOJ, 1994; CSOM, 2002; McGrath et al., 2003); however, sex offenders who do recidivate are more likely than other criminals to commit a new sex offense (Sample and Bray, 2003).

Successfully framing Megan's Law as protecting children has "inoculated it from attack" (Garfinkle, 2003:174) and serious debate, thus notification laws can be viewed as the "gateway" policy paving the way for other sex offender restrictions. Further restrictions, such as residency restrictions, further handicap offender reintegration and may still fall short on community protection. The following paragraphs discuss the punitive nature of restrictions placed on sex offenders resulting from community notification. Also, the negative aspects of registration and notification on juvenile offenders will be discussed as well as issues with plea bargains.

### ***Punitive v. Regulatory***

Every person convicted of an offense and/or released from prison is labeled by the judge or jury who found them guilty as a convict. For most, their debt to society is paid and, depending on their offense and education/skill level, they will reenter society with the capacity to begin anew, even with a blemish for once breaking their contract with society. However, for the sex offender, this is not the case. While other convicts are referred to as "ex-cons", sex offenders are viewed as "sex offenders" with no real chance, under these current laws, of ridding themselves from this label. Edwards and Hensley cogently averred, "populist punitiveness and the new penology have disjoined the sex offender from virtually every other type of criminal and have ceremoniously and



symbolically bestowed upon him a permanent, indelible, and unforgivable stain that precludes any hope of redemption and transformation” (2001:100).

The punitive nature of community notification laws is levied on sex offenders from many angles—the lone citizen in the community to employers who fire or refuse to hire to legislatures enacting further policy as an “anticipatory social control...for fear of what they might do in the future rather than for their crimes of conviction” (Farkas and Stichman, 2002:279). The unintended, negative consequences discussed throughout this paper as a result of community notification is further intensified by residency and other restrictions placed on sex offenders without empirical data or concern for the rights of others.

### ***Blanket Punishment: Forcing Offenders Away from or Toward Children***

Residency restrictions—known as the 1,000 and 2,000 foot rules in Florida and California, respectively—have been passed by legislatures and voters without any empirical data suggesting they are indeed needed (Levenson and Cotter, 2005b; Colorado Department of Public Safety, 2004). After the Iowa Supreme Court struck down their state’s residency restriction (2,000 foot rule) as unconstitutional, researchers for the Colorado Department of Public Safety were tasked with researching living arrangements of sex offenders. This study revealed the following: 1) seven states were contacted in regards to their residency restrictions, four responded stating they were implemented without any empirical research and were a challenge to implement—the other three states did not respond to the request, 2) 1,000 or 2,000 foot rules force offenders to remote (rural) areas where their conduct is not monitored thus may increase their offending potential, 3) removing a sex offender from his support system is detrimental, and 4) there

was no indication that reoffense rates were higher when offenders lived near schools, playgrounds, and parks. The Colorado Department of Public Safety recommended not using location restrictions “as a method to control sexual offending recidivism” (2004:4). However, as stated previously, research outcomes in one jurisdiction were not studied or adopted in other jurisdictions.

Levenson and Cotter’s (2005b) study of 135 sex offenders in Florida revealed Florida’s 1,000 foot rule forced 50 percent of the offenders to move and 25 percent were not allowed to return home. The courts, however, when petitioned by the offender, almost always granted a waiver allowing the offender to live with their support system. Many of the offenders felt the law would not stop someone from re-offending as most did not offend close to home and many stated the law made it difficult for them to function effectively in society. Many direct quotes by sex offenders revealed the fallacy in the law. For example, one offender described living in an all adult mobile home park but, since the park was within the 1,000 foot rule by 120 feet of a church providing a children’s class once a week, he was forced to move into a motel room. Ironically, his neighbors, just inches away, consisted of a family with three children. Another offender stated he did not realize how many schools or parks were located throughout his community until he was told to stay away. For those offenders who will re-offend and admit to not offending near their residence, the 1,000 foot rule, in essence, provides offenders with a road map to locate children.

California’s 2,000 foot rule is causing roughly 2,400 sex offenders to relocate, as reported on the news, and those who fail to do so will be sent to prison. The California Supreme Court has temporarily halted the requirement for four sex offenders who

petitioned the court (Fox News Channel). The petitioners were not guilty of child sex crimes and question the logic behind forcing them to relocate away from children assembly areas. Blanket policies designed to target, in reality, a minute portion of the sex offending population are indeed useless and, if residency restrictions are needed, they should be based on a case by case basis (Levenson and Cotter, 2005b). Returning to false sense of security, residency restriction laws convey to the public that convicted sex offenders are not allowed in certain areas, but, in reality, court waivers place many offenders in those very same areas the public perceives to be sex offender-free.

Aside from residency restrictions, sex offenders in roughly seven states are further restricted from performing legal activities in their own homes (Newsnet5, 2006; Fox News, 2007). In Maryland, all registered sex offenders on Halloween are required to 1) place a no candy sign on their door, 2) turn off their lights, 3) remain indoors between the hours of 6 PM and 6 AM, and 4) are told not to answer their doors. Also, in North Carolina, sex offenders on probation or parole are prohibited from attending or holding Halloween parties in their homes, and are required to remain indoors. In Gaston County, North Carolina, sex offenders are required to spend part of Halloween night in the county courthouse. These further restrictions do not account for the different types of offenders; they further label and stigmatize the offender; they ignore offenders with children who may be at the "trick or treating" age; and they further punish the offender by confining them to their homes and court houses. Using the above restrictions on sex offenders as a model, one would expect ex-burglars to be required to remain indoors for the entire summer as this is when most families vacate their homes for family vacations.



Initially, community notification, at its earliest stage, may have appeared to be regulatory, as ruled by the United States Supreme Court; however, residency restrictions imposed under the notification umbrella, the community's negative response as a result of knowing the sex offender's status, and other restrictions identified above have created additional burdens, causing difficulty and hardship on sex offenders, thus community notification has morphed into a form of punishment. As stated earlier, the slippery slope of community notification is not just limited to adult sex offenders as juveniles face these challenges as well.

### ***Juvenile Sex Offenders and Other Criminals***

As many as 30 to 50 percent of all child molestation cases are committed by juveniles (Becker, 1994). Studies also indicated that when juveniles rape they, unlike their adult counterparts, perform the act in groups of two or more, but this is expected since juveniles commit other offenses in groups and offenses are often committed as a result of peer pressure (Garfinkle, 2003). Juveniles are subjected to notification and registration even though their reoffense rate is as low as or lower than adult reoffense rates, and studies suggest juvenile sex offending is not predictive of future adult sex offending (Garfinkle, 2003; Zimring et al., 2007). Additionally, other studies suggest non-sex offense crimes may be more predictive of sex offending than previous sex crimes (Zimring et al., 2007; Sample and Bray, 2003); therefore, should registration and community notification apply to juveniles, and are there other offenses where a database may assist in identifying the future sexual offender?

Garfinkle (2003) argues that the misapplication of sex offender laws on juveniles, specifically registration and community notification, fails to recognize low recidivism

rates and age-of-consent laws, and harms the very children the laws were enacted to protect. Garfinkle (2003:164) averred, “Megan’s Laws are an inappropriate and ineffective means of preventing violent sexual offenses in general and that these problems are magnified when the laws are applied to juveniles.” First, reoffense rates for juveniles are roughly 4.5 to 8.5 percent (Zimring et al., 2007; Garfinkle, 2003). Zimring et al.’s (2007) data suggest that more than nine juvenile non-sex contacts with police is a greater predictor of adult sex crimes than one juvenile sex contact with police. These findings persuade Zimring et al. to suggest (humorously) that legislators should “create a potential sex offender registry” of juveniles guilty for auto theft (2007:530). Registration and community notification for such “gateway” offenses have been suggested for adults as well (Sample and Bray, 2003), but they are not taken seriously due to all the false positives—those identified who will not commit a sex offense. Therefore, there is little doubt that the offense and not reoffense rate or potential to sexually offend drives community notification given the low reoffense rates for even juvenile offenders. In other words, false positives are clearly acceptable for both adult and juvenile sex offenders under community notification.

Second, age-of-consent laws prohibit conduct otherwise legal. Garfinkle (2003) averred that age-of-consent can trigger notification for two fourteen year olds having illegal sex and our overreaction to sexual offending has even stigmatized very young children for inappropriate touching in child care centers, an activity that most psychologists view as normal behavior. During the spring and summer of 2007, an appellate case out of Atlanta, Georgia captured the media’s attention involving a young man convicted of child molestation for engaging in consensual oral sex with his girlfriend

two years his junior. He was 17 and she was 15 years old at the time of the sexual encounter. The “offender” was sent to an adult prison for 10 years as a sex offender. Recently, the Georgia Supreme Court ordered his release after serving two years of his sentence. This young man’s conduct was nothing like that of Jesse Timmendequas, Earl Shriner, nor Richard Davis; however, the overbroad application of the law has labeled many of our children as “sexual predators, subjecting them to stigma, prejudice, and denied opportunities” (Garfinkle, 2003:195). Consensual and nonconsensual contact between juveniles should not create a situation where the system desires to label them as sexual predators, but community notification has achieved precisely just that and has ignored the fact that the laws created to protect children fail to realize the offender and child could be one in the same (Garfinkle, 2003).

In sum, the low reoffense rates for juveniles and age-of-consent laws should not trap juveniles in the same registration and notification system that appears to negatively impact adult sex offenders. Additionally, creating notification data bases for other offenders (burglars, car thefts), regardless of their reoffense rate, will only increase the number of registered criminals with no real affect on offense reduction.

### ***Plea Agreements***

Megan’s Law, like mandatory sentencing, may “significantly decrease rates of arrest, prosecution, plea bargaining, and sentencing, especially in cases of incest, spousal assault, and acquaintance rape” (Corrigan, 2006:307). Sex offenses are difficult to prosecute absent DNA evidence and/or victims under the age of consent. For adult victims of sexual assault, it is understood that 75 percent know their attacker (Presser and Gunnison, 1999) and many are involved in intimate relationships. Therefore, the victim is



frequently placed on the defensive trying to prove the act was nonconsensual. These situations are complicated even further when alcohol is consumed by both the victim and suspect. In the military justice system, many of these cases are not referred to courts-martial and are disposed of through non-judicial punishment—which has adverse affects on the suspect’s military career, but is not reported as a sex offense conviction resulting in registration, notification, and, more importantly, treatment. For those cases that do proceed to court, the conviction rate is extremely low. Conversely, the rape of children is obviously much more straightforward but many child sex abuse cases do not generate DNA evidence, and 90 percent of the perpetrators are known (Presser and Gunnison, 1999) and, for some, adored by the victim (Berliner, 2007). Therefore, absent DNA evidence, it boils down to “he said—she said” just as in the case described above for adult cases.

The difficulty prosecuting such cases is magnified with community notification requirements. Freeman-Longo (1996) states some offenders will escape the notification requirements by successfully downgrading their charges through plea agreements, thus adding to the false sense of security. Additionally, if the charges are downgraded, the offender who is actually guilty of sexual offending may not receive the treatment needed to control his future behavior. For juvenile offenders, Freeman-Longo (2000) avers that social workers do not report the offense for fear of a lifetime of stigmatism and juries in Michigan are averse to convicting juveniles due to notification requirements. Lastly, community notification is an incentive for offenders not to plead guilty forcing the victim to become “re-victimized” by the criminal justice process, and also encourages the offender not to participate in treatment since his status and community treatment as a sex

offender will not change post release regardless of treatment participation and success (Edwards and Hensley, 2001).

In the end, plea agreements should be used for a number of reasons but are hampered by notification requirements. First, the court system would be overloaded if every case went to trial. Second, some sex offenses may be difficult to prove, but the desire of the accused to avoid a humiliating trial may be strong. Third, some victims desire some punishment, but, more so, they desire treatment for their abusers and want to avoid the public humiliation of the court system (Corrigan, 2006; Berliner, 2007). Lastly, the plea benefits everyone involved. Conversely, some sex offenses should never enter into plea agreements. Specifically, as Pallone (2003) suggests, pedophilic rape and other forms of rape should not be downgraded. If the system would have tried and sentenced Jesse Timmendequas for his second offense, versus entering into a plea agreement, he could have been confined for 30 years. Therefore, it seems logical that enforcing “the punishment should fit the crime” motto could negate the need for new laws and infringement on constitutional rights (Pallone, 2003). For now, plea agreements used to resolve difficult cases and prevent re-victimization are rendered useless under these strict sex offending laws by forcing prosecutors to accept pleas that do not accurately reflect the offenders crime, thus failing to force the offender into a much needed treatment program.

## **POLICY RECOMMENDATIONS**

The goal of everyone involved in this debate is the reduction of sex offenses and protecting the young; however, pro-notification groups tend to claim the moral high ground (Prentky, 1996) and, instead of attempting to find the best solutions, they defend any and all restrictions on sex offenders. Sex offenders definitely require some reasonable restrictions, just as any other offense group, but the one size fits all approach to sex offending must be replaced with offender specific sanctions. Repealing notification laws, proper sentencing and treatment for offenders as determined by risk assessments, increased funding for police, parole and probation agents, and the creation and enforcement of child supervision statutes are the policy recommendations suggested and discussed below.

### **Policy Recommendation #1: Eliminate Community Notification and Implement Confidential Notification**

Community notification further labels, stigmatizes, and punishes the offender for an offense not yet committed (Farkas and Stichman, 2002). Additionally, notification laws and the U.S. Supreme Court's decision to uphold them as non-punitive, and therefore constitutional (Terry, 2003a), have created a slippery slope allowing local governments to enact policies further restricting adult sex offenders (Levenson and Cotter, 2005b; Colorado Department of Public Safety, 2004; Proposition 83) and including juveniles in the registration and notification databases, which is contrary to the juvenile justice system (CSOM, 1999; Garfinkle, 2003). The juvenile justice system was established in order to have separate criminal procedures and consequences for adult and juvenile offenders. However, community notification and registration for juveniles exposes what should be sealed records to the general public and places the juvenile on equal footing as adult sex



offenders. Therefore, this “mission creep” of enacting further policies restricting sex offenders and inclusion of juveniles, some of which are guilty of consensual sex, may run the risk of causing “sex offender notification fatigue” (Griffin et al., 2007). In other words the general public may become desensitized and exhausted by the overload of sex offender information (number of names in registries and new legislation) and ignore the issue entirely.

Confidential notification (registration for use by criminal justice and mental health practitioners), however, places responsibility on disciplined professionals engaged in offender reintegration efforts. Sex offender registration with local authorities is sound policy given the personal nature and trauma caused by sex offenses (Clements et al., 2004). Police officers should be knowledgeable of all criminal elements within their communities and registration should be reserved for those offenses that create more trauma to victims, instead of offenses most often committed. Some (for example, Freeman-Longo, 1996, 2000) have questioned why registration does not apply to other criminals in their arguments against notification strategies. Including other criminals in what appears to be a failed policy decision does not right the wrong and full elimination of the current sex offender registration and notification laws is not feasible or politically possible. Therefore, systematically reducing the current special emphasis placed on sex offenders with confidential notification will pave the way for possible further reductions in legislation that has not produced the intended results, while still properly supervising known sex offenders.

Data do suggest sex crimes are solved by police more expeditiously as a result of registration (Barnoski, 2006a). Therefore, registration for sex offenders between 5 years

to life, dependent on the offense type and offender treatment participation, is desired in order to monitor these offenders as research does indicate failure rates (reoffense) as late as 25 years after conviction or release into the community (Maletzky & Steinhauser, 2002). Confidential registration, unlike community notification, can be viewed as a regulatory measure equipping those responsible for offender supervision and care with the information needed to monitor potential recidivist sex offenders.

In view of the fact that eliminating community notification will cause public outrage, it is vitally important that an organized campaign designed to educate the community on the benefits and consequences of notification laws be waged effectively.

***Educating the Public on the Consequences Experienced by Other Victims Created by Notification Laws***

In order to positively influence offender reintegration, diminish the deleterious affects on everyone in the community, and reverse the slippery slope inherit in unchallenged, bipartisan legislation, transforming community notification to confidential notification to law enforcement and clinical service providers may be the best alternative to the current policy (Prentky, 1996). This transformation may actually be an easier “sell” to constituents than what politicians may realize. The Gallup Organization (2006) surveyed citizens regarding their degree of concern about becoming a victim of various crimes. In the “frequently worry about” category, burglary lead the way with 21 percent; terrorism at 19 percent; car stolen at 17 percent; mugging at 9 percent; and sexually assaulted was last at 6 percent.

In the “never worry about” category, sexually assaulted lead the way with 48 percent; mugged, burglarized, or car stolen were all at 33 percent; and terrorism was 28 percent. Combining all categories where the subject worried to some degree (frequently,

occasionally, and rarely) resulted in burglary leading the way with 83 percent; car stolen at 80 percent; terrorism at 72 percent; mugging at 66 percent; and sexually assaulted at 51 percent. These numbers indicate what other research data has suggested (Zevitz et al., 2000; Phillips, 1998); that sexual offending is not a major concern for the citizenry. Therefore, it appears highly possible that communities can be educated effectively as to the benefits and consequences of community notification, but this would require a campaign organized by highly qualified professionals willing to challenge those who have had children murdered by repeat sex offenders.

This organized campaign should consist of members who work with sexually abused children and those who focus on safer communities, such as Prentky and Freeman-Longo, and use all available research data describing the deleterious effects of the law. Prentky (1996) works daily with sexually abused children and fully understands the effects of sexual abuse. Freeman-Longo (2000) works with the Safer Society Foundation which addresses policy decisions and how to better protect communities from many dangers. Both gentlemen disagree with community notification and have written on the many deleterious aspects of the law. Accurate depictions of these deleterious effects should include a discussion on comprehensive sex offender treatment and supervision programs describing their successes and shortfalls. Discussing community notifications negative effects on incest victims, offender's family members (spouse and children), and reintegration efforts may change the public's abstract perception of the offender from that of a "predator" to a person needing help to control his offending behavior. Additionally, describing accurate reoffense rates, defining "sex offender" (delineating pedophilic rape from molestation), and discussing the financial and personal costs of the policy will be



required. In other words, as Avrahamian (1998) suggests, the negative consequences outweigh the marginal gains and these negative consequences must be highlighted.

In sum, replacing community notification with confidential registration will require a considerable campaign able to withstand criticisms from John Walsh and others. Additionally, considerable attention to sex offenders in the way of sentencing and treatment, as well as post-release supervision is needed. Failing to properly punish and treat the offender will result in political and activist leader's claims of the system going soft on sex offenders; therefore, the second recommendation discusses sentencing and treatment options that should be considered when dealing with sex offenders.

#### **Policy Recommendation #2: Sentencing Options Based on Risk and Offense Along with Treatment for All Offenders**

Sex offenders are indeed a very diverse group of offenders with possibly more than one paraphilia—the incestuous offender may very well sexually abuse extra-familial children as well (Becker, 1994). Categories of sex offenders can be exhaustive and difficult to narrow down, however, the overgeneralization of sex offenders as a result of notification laws is far too simplistic and fails to effectively treat each offender's particular condition (Farkas and Stichman, 2002; Edwards and Hensley, 2001). Maletzky and Steinhasuer (2002) categorize offenders into six groups: 1) child molester with female victims, 2) child molester with male victims, 3) heterosexual pedophiles, 4) homosexual pedophiles, 5) exhibitionists, and 6) rapists. Sentencing and treatment options must, as a minimum, consider this diversity as well as the victim-offender relationship.

#### ***Sentencing***

Edwards and Hensley (2001) suggest a therapeutic jurisprudence alternative treatment track for certain first time sex offenders in place of prison and notification. A

guilty plea by the offender results in a deferred sentencing option. However, the full sentence will be imposed if the offender violates the court's orders. This concept is extremely similar to Washington State's Special Sex Offender Sentencing Alternative (SSOSA) with one major difference—notification with SSOSA still exists. SSOSA allows the offender to serve some time in jail and then released to attend a community based treatment program, but if the offender fails to comply with the court's orders he is required to serve his prison term (Berliner, 2007). Under SSOSA risk assessments are completed to determine if the offender is eligible for the sentencing alternative, but eligibility does not ensure offender admission into the program.

Since SSOSA's inception in 1984, sex offender laws over the years have further restricted those eligible for SSOSA and judges have been more reluctant to grant SSOSA, especially after community notification statutes were passed (Berliner, 2007; Barnoski, 2006b). In fact, Berliner (2007) reported only 18 percent of eligible sex offenders received SSOSA for the three counties she studied and Barnoski (2006b) reported only 15 percent were granted SSOSA statewide. Barnoski (2006b) also reported that SSOSA recipients re-offended at 3 percent whereas those SSOSA eligible offenders sent to prison re-offended at substantially higher rates. It appears Washington State has an excellent program for treating SSOSA eligible sex offenders, but their conservative use of the program should give way to a more liberal use which, with proper supervision by probation and parole agents, may decrease the overall reoffense rate as a result of not confining SSOSA eligible offenders in prison.

SSOSA type sentencing alternatives suggest positive responses from both sex offenders and victims. Certain offender types, however, may not benefit from SSOSA or

similar programs (Barnoski, 2006b; Berliner, 2007). Offenders serving their sentence in the community should be restricted to those lower risk offenders, as determined by risk assessment tools such as the STATIC 99 (McGrath et al., 2003), RRASOR (Levenson and Cotter, 2005a), or any other reliable tool. Research suggests extra-familial offenders, rapists, and homosexual pedophiles re-offend at higher rates than other types (Barnoski, 2006b; Maletzky and Steinhauser, 2002; Hood et al., 2000). For example, a male offender under 25 years of age, involved in pedophilic type activity with a young male who is not a relative, would score high on the RRASOR risk assessment tool for probability of reoffense. If the offender was a repeat offender, all requirements for an extremely high probability of reoffense are met. This type of offender does require a loss of freedom, prison or civil institution, with an aggressive treatment regime.

On the other hand, intra-familial offenders, child molesters of both sexes, and exhibitionists have lower reoffense rates (Barnoski, 2006b; Maletzky and Steinhauser, 2002; Hood et al., 2002). The same process should be used to determine reoffense probability, but victim input is crucial when sentencing offenders known by the victim. Berliner's (2007) survey of victims and parents of the same victims in Washington State indicate that sex offenders need treatment, but parents and victims diverge as to their agreement with the SSOSA option. Specifically, 71 percent of parents disagree with SSOSA while 69 percent of the victims agree with SSOSA. Berliner (2007) further explains that the victims are more concerned with the consequences to the offenders, especially those close to the victim, and are more willing to seemingly forgive the offender for his offense. However, parents are less forgiving and want harsher penalties in part because of the possible guilt associated with not properly protecting their children.



The bottom line is the diversity of both the offender and victim must be taken into account when deciding which sentencing option is best for all involved given some options involve immediate reentry into the community (Herman and Wasserman, 2001).

SSOSA sentencing and similar options should only be reserved for the Level I or II type offender guilty of certain offenses (exhibitionist, molester, some rapist) and judges must make their decisions with everyone's best interest in mind. As for Level III offenders, especially the pedophile and rapists, they should be confined for extended periods and not released into the community until their risk determination is lowered. Jessica's Law requires a mandatory minimum sentence of 25 years in prison, lifetime monitoring of adults convicted of lewd and lascivious acts with a child under 12 years old, and death or life in prison without parole if convicted of rape or sexual battery on a child under 12 years old. The federal version, Jessica Lunsford Act, consists of a ten year mandatory sentence (Jessica Lunsford Act, H.R. 1505). With the exception of death or life in prison, these prison terms and monitoring—probation and parole—should be imposed on those offender types responsible for Megan's Law and similar legislation. Longer sentences for these offender types are justified given their offense, the fact that they cannot commit further offenses against society while confined, and long-term imprisonment does not increase reoffense rates (Hood et al., 2002). With that said competent sex offender treatment services must be afforded to sex offenders regardless of their offense and length of confinement.

### ***Treatment***

Treatment success for sex offenders is determined by recidivism levels, specifically reoffense but, as Grossman et al. (1999) suggest, creating research designs for

this particular phenomenon is difficult at best. The use of effective comparison groups is complicated due to ethical and research considerations (Grossman et al., 1999; Looman et al., 2000; Marques et al., 2005; Marshall and Pithers, 1994; Nicholaichuk et al., 2000; McGrath et al., 2003; Hall, 1995). For example, some comparisons may have already received treatment at prior facilities (Nicholaichuk et al., 2000), some high-risk offenders were eliminated from both treated and comparison groups (Marques et al., 2005), several lacked randomization and consisted of overlapping populations (Marshall and Pithers, 1994), others lacked offense data (Nicholaichuk et al., 2000), and yet others over-looked dynamic factors (McGrath et al., 2003). However, a clear majority of the studies recognize that cognitive-behavioral and relapse prevention treatment strategies reduce recidivism (Marshall and Pithers, 1994; Grossman et al., 1999; Henning and Frueh, 1996; Quinn et al., 2004) and failures of previous studies were the result of not having cognitive-behavioral components (Marshall and Pithers, 1994). Additionally, community-based treatment centers tout more impressive results than institutionalized-based settings (Hall, 1995; Grossman et al., 1999; Gendreau, 1996).

Diminished treatment success in institutional settings may be the result of sex offender status and harsh prison realities. McGrath et al. (2003) suggests that the harassment and abuse sex offenders experience at the hands of other inmates are a result of their lower status within the prison hierarchy. Terry (2006) avers that prison for drug users is antithetical to treatment and drug use prevention, and may actually make matters worse. This may be true for some sex offenders but it should not be used as justification for eliminating prisons as a form of punishment for sex offenders. With that said, the desire of legislatures to treat sex offenders with "special" restrictions and laws in order to

reduce victimization should also suggest their desires for “special” prisons or sections of prisons in “all” institutions across America given the common understanding that sex offenders are harassed and abused in prisons, and that they will someday reenter the community, some worse off as a result of confinement conditions (Barnoski, 2006b).

Harassment and abuse cause one to fear for one's life or bodily injury in prison and is a barrier to effective treatment and rehabilitation (Di Iulio, 1987), and this may be magnified by the treatment staff's role conflicts and offender distrust. Farkas and Stichman (2002) discuss the conflicts treatment providers experience in light of California's chemical castration laws. After reviewing the literature, they identified the dilemma treatment professionals experience when conflicted with acting “as a helping agent for the offender and as an employee of the state” (Farkas and Stichman, 2002:269). Further, they discuss ways in which the professionals respond to this dilemma but it's the offender who is most affected due to his treatment needs not being met. The lack of professional freedom and state supervision common in prison-based treatment services breeds inmate distrust given the possibility of command influence with the perception of punishers and treatment providers working together to “deal” with the offender (Farkas and Stichman, 2002).

To counter this perception, treatment professionals must not be influenced by those responsible for the prison's punitive mission. For example, the Air Force Office of Special Investigations (AFOSI)—the FBI office of the Air Force—is located on every Air Force Installation throughout the world but they report to AFOSI headquarters in Washington, D.C. Likewise, the Area Defense Counsel (ADC)—Air Force defense attorneys for Airman accused of crimes—is located at every installation as well and



reports to their headquarters in Washington, D.C. Lastly, Air Force mental health practitioners are subordinate to the medical group whereas Air Force Corrections remain under the control of the support group. These examples illustrate proper separation of powers, so to speak, and barriers that prevent undue command influence. AFOSI will investigate crimes regardless of the base commander's desires. ADC lawyers will vigorously defend their clients regardless of the Staff Judge Advocate's position. Mental health professionals will continue to treat the patient separate from the punitive mission of the correctional staff.

The exact cause for lower sex offender success rates in an institutional setting has not been uncovered. Inmate abuse (McGrath et al., 2003) and treatment professionals as state employees (Farkas and Stichman, 2002) may contribute to prison-based programs not yielding results similar to community-based programs. Therefore, preventing inmate abuse by housing sex offenders in special wings with "like" offenders is needed, especially given the "special" emphasis placed on this particular type of offender by federal and state legislatures. Also, treatment providers in an institutional setting should consist of private professionals contracted by the department of corrections which will eliminate the loss of professional freedom apparent with government employees (Farkas and Stichman, 2002). Regardless of the treatment location, delineating sex offender treatment options for certain sex offender types and applying the risk-need-responsivity theory to treatment conditions, as well as the correctional setting, is critical for reducing sex offending (Taxman and Marlowe, 2006; Gendreau, 1996).

Once the offender's risk level and correctional setting is established, the offender's needs and responsivity must be addressed in order to identify the offender's criminogenic

needs and place the offender in the proper treatment program that will promote the greatest chances for success and offender response (Gendreau, 1996; CSOM, 2006). Becker (1994) discusses five treatment categories which seem to coincide with particular offender types. For example, biological therapies (surgical or chemical castration) should be applied to pedophiles with a long history of sexual offending and should occur concurrently with other treatment therapies (psychoanalysis and psychodynamic therapies, cognitive-behavioral and relapse prevention). Failing to identify and treat the particular needs of the offender create a negative response to treatment which leads some to conclude sex offenders are a non-treatable group of offenders.

Farkas and Stichman (2002) rightly criticize California's legislature for adopting chemical castration procedures for repeat offenders ignoring the fact that the power and control rapist are not fed by uncontrollable sexual urges. These blanket treatment policies established by unqualified lawmakers ignore sex offender etiology which in turn fails to meet the offender's needs thus limiting the offender's responsivity in treatment. To further this point, Marques et al.'s (2005) cognitive-behavioral and relapse prevention treatment study specifically and purposely eliminated high risk sex offenders from treatment (the group most responsive to treatment), and then concluded no significant difference in re-offending between treated and non-treated groups. Given the fact that, in our current political climate, a single offender's crime drives yet further expensive, sex offender legislation, it is imperative that the particular needs of each offender are addressed to ensure the offender is responsive to the treatment provided. Sex offenders are not just sex offenders and often possess other antisocial traits. Therefore, a holistic approach is needed to treat all of the sex offender's needs (CSOM, 2006).

### *Coercion and Polygraph Use*

Proper offender placement in a treatment program may, at times, require coercion and the ability to force offender accountability. "A sex offender can be considered amenable to treatment only if he acknowledges that he has committed a sexual offense, he considers his sexual offending a problem behavior that he wants to stop, and he is willing to participate fully in treatment" (Becker, 1994:187). For those offenders not fitting Becker's description, coercion and polygraph tactics may yield results.

First, studies on the efficacy of polygraphy suggest that polygraph examinations are an effective tool for sex offender treatment and supervision, but there are concerns as to their use (Grubin and Madsen, 2006; Blasingame, 1998; Kokish et al., 2005; Ahlmeyer et al., 2000; Grubin et al., 2004; Farkas and Stichman, 2002). Polygraphs are not considered reliable enough to be admissible in criminal courts, however, over 70 percent of community-based sex offender treatment programs use polygraphs for adult offenders, and their results are permissible at sex offender revocation hearings (Kokish et al., 2005; Farkas and Stichman, 2002). Some treatment providers do not embrace polygraphy due to concerns about validity and reliability (false positives and false negatives) (Blasingame, 1998), treatment provider's over-reliance on polygraphs, and claims that sex offenders will make fictitious admissions (Kokish et al., 2005).

Studies do suggest accuracy rates as high as 85 percent (Grubin and Madsen, 2006), but the polygrapher's tone of voice and demeanor can skew the results (Blasingame, 1998). Further, the experience and competence of individual polygraphers led to an accuracy rating of 53 percent from one polygrapher and 100 percent by another, both of whom attended the same school (Blasingame, 1998). Therefore, the specific role



for polygraphs and how the system responds to polygraph results (some of which may not be accurate) must be addressed so that treatment providers may employ them properly.

Disclosure exams, denial and specific issues exams, and maintenance exams are the three specific polygraph roles for sex offenders (Farkas and Stichman, 2002).

Disclosing the offender's sexual offending history, forcing the offender to fully admit to his convicted offense, and preventing high-risk behaviors is considered critical to offender accountability, risk prediction, and, ultimately, treatment (Grubin and Madsen, 2006).

However, disclosure and maintenance exams have reunited the offender with the criminal justice system. Therefore, denial and specific issues exams seem to be the only exams specific to sex offender treatment (Grubin and Madsen, 2006; Grubin et al., 2004).

Sex offenders perceiving polygraph examinations as a law enforcement function may thwart therapeutic progress. As stated by Farkas and Stichman (2002), any use of the polygraph that may interfere with the client-patient relationship can be detrimental to treatment success. Therefore, the goal of the polygraph exam should be to force the offender to admit his crimes of conviction and provide an accurate account of the offense. If full disclosure of unknown offenses is detrimental to proper treatment, then non-prosecution agreements must be developed allowing the offender to fully admit his past behaviors with the goal of treatment, not punishment, in mind (Blasingame, 1998). Exploiting treatment providers through the use of polygraphs to solve other offenses is antithetical to the mission of the mental health community and should be avoided. Furthermore, the over use of polygraphs (for example, maintenance exams) may desensitize the subject and influence exam results (Farkas and Stichman, 2002).

Therefore, polygraphs must be viewed therapeutically and used as a tool sparingly. In short, detecting lies should not be the ultimate goal (Grubin and Madsen, 2006).

In sum, polygraphy denial and specific issues exams used for treatment purposes should be excluded in the criminal justice process, to include revocation hearings, and should have no bearing on the appellate process or outcome. Also, forbidding the use of polygraphy disclosure and maintenance exams will prevent both the over-reliance on polygraphy and sex offender reunification with the criminal justice system as a result of an instrument not deemed reliable enough for criminal prosecution.

Second, coercion of certain sex offenders is needed to protect society and control offenders. Burdon and Gallagher (2002) suggest coercion is accomplished through incapacitation and treatment. Incapacitation can be prison, civil incarceration, or community supervision. As for treatment, all sex offenders require some level and form of treatment depending on their predilection, offending history, and other factors. Unlike the drug addict who limits their abuse to their own bodies, sex offenders often abuse the most innocent among us. Therefore, "the role of coercion should be to ensure that sex offenders enter into and remain in treatment" (Burdon and Gallagher, 2002:105) and prevent the offender from dropping out before reaching the stage where the offender voluntarily participates. Coercion tactics are used in Washington's SSOSA and is listed as a condition of probation. For sex offenders in prison, entering treatment programs is a form of coercion used with the prospects of early release via parole. However, for those offenders confined in prison who refuse to participate in treatment services, civil commitment statutes are yet other tools authorities can utilize to coerce the offender into treatment and protect the community.

### *Civil Commitment for the Level III Sex Offender*

Civil commitment statutes in the 1930s focused on sexual psychopaths with the goal of protecting the community until the offender was cured (Terry, 2006; Alexander, 1993). The focus was on treatment, but the overbroad application of the law included sexual activity or orientation, such as homosexuals, which subjected the law to much criticism (Farkas and Stichman, 2002). In *Foucha v. Louisiana*, the United States Supreme Court ruled a person civilly committed, but no longer treatable, could not be held based on their dangerousness (Alexander, 1993). The court ruled both mental illness and dangerousness must be present for civil commitments to stand, but this requirement has been eliminated for some sex offenders.

The United States Supreme Court ruled (*Kansas v. Hendricks* and *Seling v. Young*) that civil commitment statutes for sex offenders is constitutional and may be used as a form of incapacitation, but not retribution or punishment (Alexander, 2004). Both defendants argued that they were not receiving treatment, but the court still viewed the law as civil, not criminal. Alexander (2004) argues that the court, in these rulings and in *Kansas v. Crane* (lack of self control argument), undermines the mental health community by upholding civil commitment statutes. Nonetheless, while the DSM-IV does not define sexual disorders as a mental illness, the courts have decided to define it as such, therefore, civil commitment for sex offenders has been upheld as constitutional (Alexander, 2004; Farkas and Stichman, 2002; Elbogen et al., 2003).

Alexander (2004) alleges bias in civil commitment statutes alleging the statute is applied to only certain types of offenders and cites the fact that most children are sexually offended by family or acquaintances. This revelation is not surprising given that the



current laws dealing with sexual offending were based on a few stranger rape-murder cases and their passage did not account for the majority of sex offense (Corrigan, 2006). Janus (2000) averred that Washington and Minnesota, the states with commitment programs in use longer than others, have not released one offender from commitment (cited in Farkas and Stichman, 2002). Offenders not released from commitment facilities may indicate that these facilities are failing to provide sex offender treatment services or the committals are truly the Jesse Timmendequas and Earl Shriver type of offenders whose sexual fantasies make them a danger to society. Obviously, the prior situation needs correcting while the latter rightly deserves further incapacitation.

Alleging most sex crimes are committed by normal people, Alexander (1993) avers sex offenders are best treated by the criminal justice system. This is a valid argument for most sex offenders. In fact, some offenders are not imprisoned and/or successfully complete treatment within the community (Berliner, 2007; Barnoski, 2006b). Also, some research suggest that sex offending is not an addictive or persistent behavior, even though relapse prevention (a program initially used to drug addiction) has yielded success when employed on sex offenders (CSOM, 2006). On the other hand, other research suggests sexual preferences and antisocial orientations, which exist mainly in rapists and pedophiles, lead to persistent sexual offending (Hanson and Morton-Bourgon, 2005; Jenkins, 1998 cited in Corrigan, 2006). Therefore, civil commitment should be reserved for sex offenders who: 1) refuse to participate in treatment while imprisoned and 2) are deemed dangerous to society (Level III offenders). Risk assessments tools must be employed as with sentencing options using a reliable tool (for example, RRASOR, Static 99, or a host of other tools developed by individual states). The criminal justice and

medical system has an obligation to the community to jointly protect the community while incapacitating and treating of sex offenders.

It appears that all of the recent sex offender laws that target an indefensible population and the court's utilitarian approach are not subject to reversal. Therefore, local governments must act to do what is best for all in the community. If some mental hospitals are indeed not providing treatment services to sex offenders (clearly some are for involuntary and voluntary offenders, see Elbogen et al., 2003), they must begin to provide treatment services as the ultimate goal must be to treat and release sex offenders with a reduced risk level and the skills necessary to reintegrate into the community. Allowing offenders to sit idle in mental hospitals may create further victimization within the hospital (Farkas and Stichman, 2002; Grossman et al., 1999). Therefore, as in prison settings, this group of offenders should be housed in separate areas to protect other patients.

In sum, the individual attention legislatures provide to sex crimes should be applied to sex offenders as well. All sentencing and treatment options should be exploited with due consideration for the offense, offender, victim, and victim-offender relationship with the goal of doing what is best for the community as a whole. To that effect, proper supervision of released sex offenders should be the job of criminal justice practitioners, not community members, thus the third recommendation discusses probation and parole officer-offender ratios.

### **Policy Recommendation #3: Increase Offender Supervision by Increasing Criminal Justice Personnel**

Policymakers are failing to address prisoner reentry and the "gains in crime reduction may erode if the cumulative impact of tens of thousands of returning felons on

families, crime victims, and communities is not considered” (Petersilia, 2000:1). Increased case loads for parole officers and increased spending on prisons, but not rehabilitation programs create an environment where offenders are not properly supervised and over 60 percent are unemployed (Petersilia, 2000). In 2005, adult parolees increased by 1.6 percent to over 12,000 for the year and probationers grew by 0.5 percent to over 19,000 for the year (BJS, 2005). The probationer increase was the smallest increase in 26 years possibly as a result of our reliance on prisons. Eighty percent of the over 2.2 million inmates housed in our state and federal prisons, and county jails will be released under parole supervision (BJS, 2005). The lack of sufficient supervision for all ex-convicts is intensified by community notification requirements, the public’s response to sex offenders, and releasing high-risk sex offenders (those needing intensive supervision) into the community. As implied throughout this paper, policy-makers failed to step back and look at the big picture as it relates to sex offender notification laws and are ignoring the negative consequences of the law. Additionally, they appear to be insensitive to the issues and concerns raised by probation and parole officers.

Sex offenders, especially those identified as Special Bulletin Notification cases (SBN) or high-risk (notification required), has strained probation and parole agents causing them to neglect the rest of their cases because of the time and resources needed to supervise SBN case sex offenders (Zevitz and Farkas, 2000). Additionally, Zevitz and Farkas (2000) reports agents’ case loads are too large (capped at 25, but often exceeded) and the time spent preparing for notification meetings makes it impossible for proper supervision of even the SBN cases. In the state of North Dakota, the seven sex offender specialists responsible for sex offender supervision have case loads capped at thirty-five



offenders, but this number is often exceeded. Additionally, monthly contact with the offender (either by the officer or treatment provider) is the stated goal (Brian Weigel, personal communication, 3 October 2007). In other words, in North Dakota, months could pass before the offender has personal contact with their probation or parole officer as long as the offender is meeting with their treatment provider. There are also five additional agents trained in sex offenses who supervise offenders due to North Dakota's rural environment. The emphasis placed on supervising sex offenders and the increase in parolees has not yielded the required increase in supervision personnel. The officer-offender ratios need to be reduced.

Eliminating community notification laws and civilly confining Level III offenders will not necessarily decrease the workload for these agents, therefore, the recruiting and training of more probation and parole officers is needed. As Prentky (1996) suggests, agents supervising high-risk offenders should intensively supervise them and their caseloads should not exceed 15 sex offenders. Intensive supervision of the most dangerous sexual offenders by authorities living within a community provides more incentive not to re-offend than notification statutes (Zevitz and Farkas, 2000). Risk management of these offenders (focusing on the individual sex offender needs on a continuous, daily basis) is critical for effective offender control (CSOM, 2002).

As stated previously, high risk offenders should be civilly committed until their risk level reduces. Therefore, intensive supervision should be reserved for those Level II offenders recently released from civil commitment and those whose risk determination was recently reduced through other means (for example, prison treatment programs) (Corrigan, 2006). Additionally, confidential notification discussed in the first

recommendation creates an environment where law enforcement may act informally as part of the supervision team. Sex offenders visited by patrol officers sends a clear message to the offender that the criminal justice system has departments working in tandem to monitor and control his behavior.

The impact of intensive supervision and confidential notification may create a situation where sex offenders are targeted by police, probation, and parole officers thus increasing re-arrest for technical violations that often go unnoticed under the current notification system. However, as Elbogen et al. (2003) suggest, sex offenders are often ignorant of the current sex offender laws and violate conditions of probation or parole based off of that ignorance, not with the intent to re-offend. Therefore, intensive supervision (increased offender-officer quality time) may serve as continuing education for those sex offenders who would otherwise mistakenly violate their conditions. At the same time, intensive supervision will, hopefully, target and prevent those sex offenders who are less able to control their offending behavior thus preventing re-victimization.

In sum, an increase in probation and parole staff, confidential notification, and only releasing Level I and II offenders into the community will both decrease agent work loads (no preparation for notification meetings) (Zevitz and Farkas, 2000) and agent case loads while increasing offender supervision.

#### **Policy Recommendation #4: Create and Enforce Child Supervision Statutes**

“One of the most important developmentally based determinants of children’s safety is parental supervision” (Peterson et al., 1993:934). Zielewski et al. (2006) stated that 3.3 million school aged children spend time caring for themselves and roughly 50 percent of all child abuse and neglect cases resulted from inadequate supervision. The

Federal Child Abuse Prevention and Treatment Act (CAPTA) defines neglect as, “child abuse and neglect means, as a minimum, any recent act or failure to act on the part of a parent or caretaker, which results in death, serious physical or emotional harm, sexual abuse or exploitation, or an act or failure to act which presents an imminent risk of serious harm” (quoted in Zielewski et al., 2006). Under this definition, many parents who fail to adequately supervise their children may be punished criminally, however, this does not seem to be the case, nor is the problem given the same media attention given to the few high profile child rape-murder cases. Garfinkle (2003) asserted over 5,000 children are killed and 18,000 are permanently disabled each year by parental abuse, but most cases are not reported on the news unless it deals with a parent leaving a child in a sweltering vehicle and, in even these cases, many view the crime as accidental resulting in no accountability. The primary question is at what age should parents feel reasonably sure that their child can care for himself or herself?

Peterson et al. (1993) surveyed parents, child protective service specialist, and medical professionals in an attempt to determine at what age children’s supervision level should decrease given certain environmental risk conditions. They all agreed that supervision levels should decrease (that is, parents may leave children unattended for some time) under the following age and conditions: 1) age 7 – hazardous room in the home; 2) age 6 – hazardous yard; 3) age 6 – street; 4) age 9 – busy street; and 5) age 7 – hazardous neighborhood. Another study (Zielewski et al., 2006) revealed 12 percent of children between the ages of 5 and 12 years old are in self-care and 14 percent of parents claim the first time they left their children, ages 0 to 6 years old, home alone was for thirty minutes. Zielewski et al. suggest the 14 percent number to be low given the stigma of



leaving children unattended and view these numbers, as well as the abuse cases cited above, as the tip of the iceberg which is not addressed due to the lack of “federal policy regarding self-care” (2006:14). Officially, at the state level, the only states addressing child supervision are Illinois and Maryland which have age restrictions leaving children home alone, 14 and 8 years old, respectively (NCIC, 2007). However, they are not written as law but as guidelines, much like New Jersey’s guidelines which basically indicates no age restriction for children left unattended, but, if the child is harmed, neglect charges may be filed against the caregiver.

No law can replace effective parenting and supervision, but the lack of official concern for children left unattended is evident in the statutes and parental lack of concern for their children (for example, leaving children unattended) is evident in research (Phillips, 1998; Peterson et al., 1993; Zielewski et al., 2006). Community notification is touted as part of a comprehensive plan to reduce sexual offending by repeat sex offenders, however, failing to address child supervision as part of that comprehensive plan predetermines said comprehensive plan to failure. Farkas and Stichman (2002) have suggested that the current sex offender laws may remove some of the responsibility for sexual offending from the offender because of the community’s failure to properly supervise him. This may not only be true for the repeat offender, but for those offenders not yet identified. Parents are not the blame for the rape-murder of their children, but they are to blame for failing to protect their children with proper supervision. Therefore, regardless of the source that caused their children harm—sexual predator, loose pit-bull, busy intersection—there is a level of responsibility parents must accept.

If, as Garfinkle (2003) revealed, parents feel at ease leaving a 7 year old child in a hazardous neighborhood unattended, then they must realize they are subjecting their child to and accepting on behalf of their child a certain level of risk. And, if by chance their child is harmed, they own part of the responsibility based on their own conscience risk assessment and willingness to accept that level of risk. In other words, if one chooses to leave their child alone in the bath tub, they must consider slipping and falling and, ultimately, drowning and death when making that decision. As Berliner (2007) suggests, parents do express guilt for not protecting their children, however, sometimes that guilt drives some parents to activism as a way to diminish their responsibility and place their portion of the blame elsewhere.

As a society, we can create statute after statute with each singular incident of child rape and murder, but this does little to prevent repeat sexual offending and nothing towards preventing unknown sexual offenders from acting out their sexual desires on our unsupervised, helpless children. Political and activist leaders have no doubt successfully classified repeat sexual offending by sexual child predators as an epidemic; therefore, most are not willing to accept the already low recidivism rates unless they are near zero (Grossman et al., 1999). This, however, is an unrealistic goal considering that not all child deaths are preventable even with proper supervision. Child supervision is effective in some communities, for example the military, and, as with other programs, communities can learn from each other by benchmarking on already successful programs.

Military bases are notorious for possessing regulations covering nearly every contingency—unattended children (playing outside alone) is one such area included and enforced. Violators of child supervision regulations are apprehended and the end result is

a visit to Family Advocacy for proper parenting skills. These children and violators are not identified by law enforcement; rather their situation is brought to the attention of law enforcement by concerned citizens (neighbors) in the same community. If community notification had any chance for success, it would succeed in this type of community environment consisting of a somewhat well disciplined, homogenous community focused on community protection and individual responsibility. However, with civilian communities facing threats most military installations do not, it seems ironic that the "more secure" community places more emphasis on child safety. Parents need to be held accountable for actions and inactions, as CAPTA suggest, in order to prevent more severe victimization, and legislators should create a multidisciplinary team chartered with drafting effective child supervision guidelines that can be enacted into law. Those who offend and prey on the weak will continue to victimize our children regardless of notification laws. Therefore, the best way to protect children from all victimization is with proper supervision and care.

Child supervision statutes will no doubt increase the criminal justice system workload, but possibly not any more than the current sex offender laws. Some violators of child supervision statutes should be arrested and prosecuted based on the situation and dangers to the child, while some may only need to be issued a citation or notice to appear before a court of law. For many parents a simple financial penalty may be enough to change their behaviors. In the end, effective child supervision may do more to protect our children from a host of dangers (Peterson et al., 1993), whereas sex offender laws focus specifically on one type of danger, stranger danger, to the exclusion of all other dangers to our children.



Failing to include child supervision requirements as part of the “comprehensive plan” ignores the reality that we have more of a parental child supervision problem than a stranger rape-murder problem (Zielewski et al., 2006; Garfinkle 2003).

## CONCLUSION

The calculated move by the assembly leader of the New Jersey Legislature to “declare a legislative emergency” moving the bill that would become Megan’s Law past “private” committee scrutiny straight to the floor for open debate was a victory for activists and Kanka’s parents, but not for the passage of effective, thoughtful, and new legislation (Avrahamain, 1998). Additionally, framing the argument as child protection shielded it from debate and much needed scrutiny. Thus far, evidence suggests community notification has not delivered the intended results as indicated by reoffense rates (Barnoski, 2005a) and continued legislation (Jessica’s Law, 1,000, and 2,000 foot rules) enacted with each single occurrence of child rape-murder. Terry (2003a:58) averred that, “Legislators should not further extend legislation that does not, based on empirical evidence, achieve its goal of community protection.” It seems, however, that many policy-makers have solidified their position on this subject to the degree that reversing course is almost impossible.

Repealing notification laws outright under the current political climate may be nearly impossible for adult offenders and, as Garfinkle (2003) suggest, the same may be true for juvenile offenders as well. Therefore, at the very least, notification requirements should be limited to the very population responsible for its implementation, not the blanket application seen thus far. As Berliner (2007:13) suggests, “sex offenders in the abstract are despicable and undeserving of any special considerations, whereas sex offenders who are known, especially those who are not generally antisocial, are often perceived to deserve a modified consequence.” The phrase “sex offenders” mistakenly aligns Jesse Timmendequas with the nonviolent incest offender and convolutes the

public's perception of sex offenders. Therefore, notification laws, while still not an effective solution for repeat sexual offending, needs to narrowly target the intended population.

The theoretical concept of community notification must be applied to this narrowly, targeted population in order for sex offenders to reintegrate and function in the community. Communities must recognize that successful treatment for sex offenders is possible. Studies are suggesting considerable declines in reoffense rates, which are already low, as a result of treatment (Hall, 1995; Grossman et al., 1999; Marshall and Pithers, 1994; McGrath et al., 2003). Additionally, communities must recognize reentry initiatives focused on educational programs and improved community supervision appears to have positive impacts on victims and offenders (Herman and Wasserman, 2001; Berliner, 2007; Barnoski, 2006b; Presser and Gunnison, 1999). Also, communities must support offenders' desires to attend Impact of Crimes on Victims courses and efforts should advance towards victim-offender mediation (Herman and Wasserman, 2001). Lastly, as Zevitz and Farkas (2000) suggest, communities need to provide support in the way of housing and employment.

If communities are willing apply the theoretical concept of community notification, they must also accept that community notification, as applied thus far, has not yielded reductions in sexual offending and may be making matters worse (Feeman-Longo, 2000). For example, current residency restrictions and "foot rules" are the antithesis to notification strategies making it difficult for communities to participate in the activities stated above. Additionally, they must resist the desire to pass further legislation sparked by one offender's actions. Corrigan averred, in her critique of Megan's Law,



“Preventative policies that truly sought to protect the greatest number of children from the greatest source of harm would instead prioritize intrafamilial abuse, not predation by strangers” (2006:291). However, it is the Megan Kanka type rape-murders that capture the headlines and formulate policies. In the end, New Jersey’s Megan Law identifies only 2 percent (362 individuals) of sexual offenders; the other 98 percent are unknown to the general public (Corrigan, 2006). If the state could house these 362 individuals in a treatment facility until properly treated, confidential notification in the birth place of Megan’s Law is an extremely viable option.

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